



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD284

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Issuance of a scientific research permit, and notice of availability for final environmental assessment and finding of no significant impact.

SUMMARY: This notice is hereby given that NMFS has issued Permit 17781 to Mr. Robert Clark, Fisheries Program Supervisor of the U.S. Fish and Wildlife Service (USFWS), in accordance with the Endangered Species Act of 1973, as amended (ESA). In addition, the Final Environmental Assessment (EA) and Finding of No Significant Impact associated with this permit are available to the public.

ADDRESSES: The approved application for the permit is available on the Applications and Permits for Protected Species (APPS), <https://apps.nmfs.noaa.gov> website by searching the permit number within the Search Database page. The application, issued permit, Final Environmental Assessment, Finding of No Significant Impact and supporting documents are also available by appointment, or upon the following:

- Mail: Submit written requests to Elif Fehm-Sullivan, Fisheries Biologist, West Coast Region, California Central Valley Area Office, National Marine Fisheries Service, 650 Capitol Mall, Suite 5-100, Sacramento, CA 95814.

- Fax: (916) 930-3629
- E-mail: Elif.Fehm-Sullivan@noaa.gov.

You may access a copy of supporting documents including the final EA by one of the following:

- Visit the NMFS Reintroduction website at
http://www.westcoast.fisheries.noaa.gov/central_valley/san_joaquin/san_joaquin_reint.html.
- Call (916) 930-3723 and request to have a CD or hard copy mailed to you.
- Obtain a CD or hard copy by visiting the NMFS Central Valley office at 650 Capitol Mall, Suite 5-100, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Elif Fehm-Sullivan, National Marine Fisheries Service, 650 Capitol Mall, Suite 5-100, Sacramento, CA 95814 (916) 930-3723.

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222-226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to ESA listed species from the threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) (spring-run Chinook salmon) evolutionarily significant unit (ESU) and threatened California Central Valley (CCV) steelhead (*O. mykiss*).

Permit 17781

NMFS formally initiated a public review period for review of the permit application through publication of a Notice of Receipt (NOR) of the Permit application in the Federal Register on December 31, 2013, outlining the research and enhancement activities proposed by USFWS and take of ESA-listed spring-run Chinook salmon proposed under Permit 17781 (28 FR 79675). The notice of receipt included a 30-day public comment period for this permit application, which closed on January 30, 2014. A combined total of 6 public comments on the permit application were submitted to NMFS by two entities.

The public comments and NMFS' response are as follows:

Comment 1: The permit should acknowledge the protections accorded by The Settlement Act requiring that the reintroduction of spring-run Chinook salmon to the San Joaquin River will have no adverse impacts to Central Valley Project (CVP) contract allocations.

Response: The protections accorded by The Settlement Act, as referred to in the above comment and in this response (Pub. L. 11-111, Title X, Section 10011), have been addressed in the designation of an experimental population rule (50 CFR 223.301(b)) that went into effect January 31, 2014. That federal regulation states that an annual technical memorandum will be developed to ensure that the reintroduction of spring-run Chinook salmon will not result in more than de minimus water supply reductions, additional storage releases or bypass flows on unwilling persons

or entities diverting or receiving water pursuant to applicable State and Federal laws. This also applies to the CVP and State Water Project (SWP) operations under any biological opinion or ESA section 10 permit that is in effect at the time for operations of the CVP and SWP. The actions of this permit will be considered in that annual process. Also note that this is directly addressed in the permit application project description. To address concerns of downstream water users and to assess take at the State and Federal pumping facilities in the Delta, an externally visible mark will be used by the Program.

Comment 2: The permit application should include provisions for genetic monitoring to ensure the introduction of the experimental spring-run Chinook salmon population will not result in adverse impacts to CVP operations.

Response: Please see the response to comment 1. Genetic material collection is part of this permit application. The need for genetic testing with respect to this concern will be addressed in the annual technical memorandum associated with 50 CFR 223.301(b).

Comment 3: There is inadequate habitat in the San Joaquin river and as a result, the issuance of the 10(a)(1)(A) permit for the salmon reintroduction program with the goal of spring-run Chinook salmon reintroduction to the San Joaquin River in 2014 is far in advance of the necessary structural and channel improvements, which are critical to providing habitat conditions for the successful reintroduction of spring-run Chinook salmon to the San Joaquin River.

Response: NMFS recognizes that the restoration of naturally self-sustaining populations of Chinook salmon to the San Joaquin River will require completion of other channel and habitat improvements to be implemented by the San Joaquin River Restoration Program. However, suitable habitat for Chinook salmon presently exists seasonally and in places along the San

Joaquin River as described in section 3 of the EA. Reintroduction is not one single event, but a series of several events that over time will lead to successful restoration of spring-run Chinook to the San Joaquin River. In order for the reintroduction to be successful, the initial step of this reintroduction process will have a testing phase, where the collection, transportation, holding, rearing, and release techniques can be tested to ensure that the program will not have an adverse effect on these listed fish. This permit authorizes the implementation of necessary initial actions and the scope of the permitted actions does consider existing habitat availability.

Comment 4: There is inadequate funding for the San Joaquin River Restoration Program to achieve the program's goals of habitat restoration, channel improvements, and operate the salmon reintroduction program.

Response: Please see response to comment 3. For the purposes of this permit, NMFS assumes that all channel and structural modifications, habitat improvements, and water releases, will be implemented as required by the Settlement. Implementing only some of these measures would not achieve the Restoration Goal, and thereby would not fulfill the terms and conditions of the Settlement. NMFS correctly makes assumptions that other related factors such as compliance with other laws, plans, and policies and adequate funding to carry out the proposal will occur. Funding sources are identified for the implementation of the SJRRP. Lack of implementation could result from a suite of potential factors including lack of funding or noncompliance with a related law. If funding issues prevent the completion of some SJRRP actions, there would be no impacts to third parties from the reintroduction of spring-run Chinook salmon due to the non-essential experimental population designation and take exemptions. However, throughout Settlement implementation, the Implementing Agencies will remain cognizant of funding

availability and the need to prioritize individual actions in recognition of their anticipated costs and effectiveness. If the reintroduction program were halted because of a lack of funding, NMFS would then reevaluate the program and make necessary adjustments through its regulatory processes.

Comment 5: The permit application anticipates the use of a trap and haul program to move spring-run Chinook salmon around major passage impediments in the early years of the reintroduction program, however it does not adequately address the impact on survival from such a trap and haul program.

Response: The permit application calls out specific release criteria for juveniles, found in appendix J of the attached permit documents, which specify that fish will be released only from a point where there is connectivity with the ocean, and the potential impact on survival resulting from this handling and transport has been accounted for in the take tables found in the permit application and the permit itself. For returning adults, a trap and haul program would only be used if necessary, as outline in appendix K of the attached permit documents. The incidental mortality rate provided by USFWS for the adult trap and haul program is 3 percent. The number used is a doubling of the observed mortality rate of adult fall-run trap and haul program currently being used in the San Joaquin River and outlined in appendix K. This number was used as a conservative, surrogate estimate for take, as no spring-run Chinook trap and haul program has been performed in this area.

Comment 6: The permit application proposes the use of in-river and streamside incubators for eggs and the use of in-river holding pens for juveniles, including unmarked juveniles that have not reached a sufficient size for marking, but does not adequately address the risks of releases of

eggs or unmarked fish to the San Joaquin River either through accidental release or vandalism.

Response: Eggs will be transported to stream side incubators. As they develop into juveniles they will be held in incubators until they can be tagged and adipose fin- clipped, and then moved to holding pens. No un-marked juveniles will be put into net pens. The stream side incubators will be placed on federal land and built in such a way as to deter vandalism to the best extent possible.

Permit 17781 authorizes USFWS; take of ESA-listed Central Valley spring-run Chinook salmon from the Feather River Fish Hatchery (FRFH) for the following activities: (1) The collection of spring-run Chinook salmon juveniles and eggs from the FRFH and their transport to stream side incubators located alongside the San Joaquin River; (2) the transport of collected Chinook salmon to holding pens located in the San Joaquin River; (3) the tagging of FRFH collected spring-run Chinook salmon; (4) the release of tagged juvenile spring-run Chinook salmon from FRFH, the salmon conservation and research facility (SCARF), and those juveniles that were raised in the stream side incubators; (5) the release of tagged adult salmon from SCARF in years 4-5 of the permit; (6) monitoring and evaluation associated with permitted activities; and (7) if required, quarantine and pathology testing on eggs and/or juveniles collected from FRFH.

Dated: May 6, 2014.

Angela Somma, Chief, Endangered Species Division,
Office of Protected Resources,
National Marine Fisheries Service.

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